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BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

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COMMISSIONERS

BOB STUMP - Chairman
GARY PEARCE
BRENDA BURNS
SUSAN BITTER SMITH

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ORIGINAL

ARIZONA CORP COMMISSION
DOCKET CONTROL

In the Matter of:

KENT MAERKI and NORMA JEAN COFFIN
NORMA JEAN MAERKI, aka NORMA JEAN
MAULE, husband and wife,

DENTAL SUPPORT FRANCHISE, LLC, an
ARIZONA LIMITED LIABILITY COMPANY

Respondents.

Docket No. S-20897A-13-0391

**RESPONDENTS' REPLY TO
OPPOSITION TO
EMERGENCY APPLICATION TO
CONTINUE TO HEARING**

COMES NOW RESPONDENTS, Kent Maerki and Norma Jean Coffin

Norma Jean Maerki, aka Norma Jean Maule, husband and wife, Dental Support Franchise, LLC, an Arizona Limited Liability Company, (Hereinafter "Respondents") by and through their counsel of record, Marie Mirch and hereby replies to the Securities' Division's Response to the Motion for Continuance. This reply is based on the following memorandum of points and authorities, exhibits, affidavits and pleadings on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

1. PROCEDURAL HISTORY

The court is well familiar with the procedural history. The present matter is the need to vacate the current hearing set to start Monday September 29, 2014.

2. RELIEF REQUESTED

The motion to continue was filed on behalf of ALL of the Respondents. The Securities

1 Division, incorrectly states that "Respondent Norma Jean Coffin aka Norma Jean Maerki, aka Norma
2 Jean Maule did not request a continuance. The first sentence of the motion proves otherwise.

3 **3. MEDICAL DOCUMENTATION SUPPORTS RESPONDENTS' MOTION**

4 The Securities Division contends that there is not sufficient support to the fact that Mr.
5 Maerki had stroke and cannot participate n the hearing. The Division discounts the medical records
6 which were submitted from Wolfson Integrative Cardiology, the notice from Dr. Wolfson, the
7 medical records from Barrow Neurovascular, and the Medical records from Scottsdale Healthcare
8 Shea Hospital. Apparently, the Division and its counsel feel more competent to evaluate Mr.
9 Maerki's records and measure the extent and the effect of Mr. Maerki's stroke¹, and therefore expect
10 the Court to ignore the actual evidence from the health care providers who are qualified to interpret,
11 diagnose and treat Mr. Maerki's condition.

12 Since the motion was filed last week, Ms. Mirch has received more documents from Mr.
13 Maerki's health care providers. The Division wanted a statement from a neurologist. Exhibit A is
14 a letter from Mr. Maerki's nuerologist, Dr. Seth Kaufman, M.D., who is Board Certified in
15 Neurology, Vascular Neurology and Neuromuscular Medicine. Dr. Kaufman states: "Mr. Maerki
16 needs to avoid being involved in a legal hearing because of the stress it may cause as a result of his
17 acute stroke". Further, Dr. Kaufmann referred Mr. Maerki for a battery of neurological/psychological
18 testing. Mr. Maerki was just given an appointment for this testing to occur on October 1, 2014.
19 Exhibit D.

20 Attached hereto as Exhibit B is an affidavit from Mr. Maerki's cardiologist, Dr. Jack Wolfson.
21 Dr. Wolfson says in no uncertain terms that Mr. Maerki had multiple medical problems. Dr.
22 Wolfson states, "it is my medical opinion that Mr. Maerki's participation or appearance in any legal
23 matter could have a very serious negative impact on his health. Therefore, I have advised Mr.
24 Maerki that he is not to participate in any stressful events, in particular any legal proceedings."

25
26 ¹The Division challenges Ms. Mirch's affidavit saying that Ms. Mirch has no personal
27 knowledge, but was relying on information Mr. Maerki gave her. The affidavit indicates that
28 some of the information was based on information and belief, while others were based on
documents and conversations Ms. Mirch has had directly with the medical providers.

1 The Division makes ado about Mr. Maerki driving his car. Dr. Wolfson addresses the scope
2 of permissible activity for Mr. Maerki which includes "simple life tasks that do not subject him to
3 stress, but that has no bearing on the risk that is imposed on Mr. Maerki's health if he is put in to a
4 stressful situation such as legal proceedings." Driving a car and eating lunch are not a stressful
5 situations such as a legal proceeding.


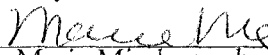
6 Finally the Division claims that Mr. Maerki is scheduled to attend a "WarRoom" event
7 in Las Vegas next week. Mr. Maerki is not going to this conference. Exhibit C contains the
8 confirmation of the cancelled air, hotel and seminar. Those arrangements were made by Mr.
9 Maerki's office prior to his stroke or the hearing. Mr. Maerki's focus over the past few weeks is
10 on his health and the effects of his stroke. When he learned that he was scheduled to attend the Las
11 Vegas event, he instructed his staff to cancel the trip, which they did. Mr. Maerki did not remember
12 to cancel these earlier. He has more important things to worry about like getting appointments for
13 the testing and rehabilitation he needs. As the Division recognizes, it is at least eight weeks before
14 the doctor can even consider whether Mr Maerki is fit for trial at that time.

15 **3. CONCLUSION**

16 Good cause exists to continue the hearing. The Divisions' opposition is based on lay review
17 and interpretation of the medical records, speculation as to why Mrs. Mirch is out of her office for
18 a week before the hearing, and discovery of an event in Las Vegas that was planned well before the
19 stroke or this hearing, which Mr. Maerki is not attending. Now, the Division takes issue with Mr.
20 Maerki driving downtown to get something to eat. As Dr. Wolfson clearly attests, Mr. Maerki is not
21 limited in everyday, non-stressful activity. Rather, Mr. Maerki has multiple serious medical
22 problems that bar him from participation in the legal proceedings. He Court must listen to the
23 doctors, they are the ones with the expertise to assess the impact that his legal proceeding will have
24 on Mr. Maerki, which is very severe.

25 Respectfully submitted this ^{25th} day of September, 2014.

26 By



Marie Mirch, pro hac vice
Mirch Law Firm, LLP
750 B Street #2500
San Diego, CA 92101

(619) 501-6220

Counsel for Respondents

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CERTIFICATE OF SERVICE

I hereby certify that I am over eighteen years of age and employed by Mirch Law Firm, L.L.P.
On the date set forth below, I served the foregoing Reply to Response to Application to Continue
Hearing as follows:

Wendy Coy
Senior Counsel
Arizona Corporation Commission
Securities Division
1300 W. Washington, 3rd Floor
Phoenix, Arizona 85007


via e-mail only Wcoy@azcc.gov

Mark Chester
Ryan Houser
Chester & Shein
8777 N Gainey Center Dr Ste 191
Scottsdale, AZ 85258

via e-mail mchester@cslawyers.com
rhouser@cslawyers.com

Dated September 25, 2014.

BY


Marie Mirch
Marie Mirch

Sep. 24, 2014 12:00PM

No. 8293 P. 1

Scottsdale
NEUROLOGY

Seth M. Kaufman, M.D., M.P.H.
Board Certified in Neurology
Board Certified in Vascular Neurology
Board Certified in Neuromuscular Medicine

September 24, 2014

RE: Kent Maerki 9/13/1942

To Whom It May Concern:

Mr. Maerki needs to avoid being involved in a legal hearing because of the stress it may cause as a result of his acute stroke. If you have any questions, please call our office 480-621-3313.

Sincerely yours,



Seth M. Kaufman, MD, MPH

A

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PEARCE
BRENDA BURNS
SUSAN BITTER SMITH

In the Matter of:

KENT MAERKI and NORMA JEAN
COFFIN

NORMA JEAN MAERKI, aka NORMA
JEAN MAULE, husband and wife,

DENTAL SUPPORT FRANCHISE, LLC, an
ARIZONA LIMITED LIABILITY
COMPANY

Respondents.

Docket No. S-20897A-13-0391

**AFFIDAVIT OF JACK WOLFSON, DO
IN SUPPORT OF
RESPONDENTS'
EMERGENCY APPLICATION TO
CONTINUE TO HEARING AND
MOTION FOR ORDER TO SHORTEN
TIME**

_____/

State of Arizona)
) ss.
County of Maricopa)

I, Jack Wolfson, hereby declare:

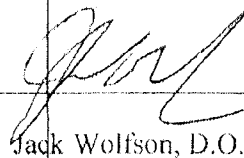
1. I am a doctor licensed to practice medicine in the State of Arizona. I am over the age of eighteen and am competent to testify regarding all the allegations contained herein. If called upon to testify, I have personal knowledge of the following facts and would testify as follows:

2. I am board certified in cardiovascular disease from the America Board of Internal Medicine and am a Fellow in The American College of Cardiology.
3. Mr. Kent Maerki is a patient of mine. I understand that he is scheduled to be in a three to four week legal hearing beginning next week. In light of his multiple medical problems, Mr. Maerki should not participate in this hearing. I make this Affidavit in support of his request to continue the hearing.
4. Mr. Maerki has multiple medial problems, including cardiovascular disease, open heart surgery, atrial fibrillation, a recent stroke and a history of recurring stroke. Further, he is on a number of medications for his conditions, and he has a very strict diet and diet schedule he must follow.
5. It is my medical opinion that Mr. Maerki's participation or appearance in any legal matter could have a very serious negative impact on his health. Therefore, I have advised Mr. Maerki that he is not to participate in any stressful events, in particular any legal proceedings.
6. Mr. Maerki may engage in simple life tasks that do not subject him to stress, but that has no bearing on the risk that is imposed on Mr. Maerki's health if he is put in to a stressful situation such as legal proceedings.

I swear under penalty of perjury that the foregoing is true and correct.

Executed this 25 day of September, 2014.

BY



Jack Wolfson, D.O.

Subject: Fwd: War Room Cancellation
From: Kent Maerki (kentmaerki@gmail.com)
To: marie@mirchlaw.com;
Date: Thursday, September 25, 2014 6:43 AM

fyi

Kent Maerki
KentMaerki@gmail.com

----- Forwarded message -----

From: **Deanna Rogers-DM** <deanna@digitalmarketer.com>
Date: Wed, Sep 24, 2014 at 7:40 PM
Subject: Cancellation
To: kentmaerki@gmail.com

Kent,

We have cancelled your reservation to attend the WarRoom event next week in Vegas. I hope to see you at a future event.

DeAnna Rogers
Corporate Director of Events

Digital Marketer
4330 Gaines Ranch Loop, Suite 120
Austin, TX 78735
Cell: #512-797-5100
Skype: deannarogers3

C

9/25/2014

Print

Subject: Fwd: Confirmation# 16698077 Wynn Las Vegas
From: Kent Maerki (kentmaerki@gmail.com)
To: marie@mirschlaw.com;
Date: Thursday, September 25, 2014 6:46 AM

fyi

Kent Maerki
KentMaerki@gmail.com

----- Forwarded message -----

From: <roomresmail@wynnlasvegas.com>
Date: Wed, Sep 24, 2014 at 1:07 PM
Subject: Confirmation# 16698077 Wynn Las Vegas
To: kentmaerki@gmail.com



Received by: September 24, 2014

From: roomresmail@wynnlasvegas.com
Subject: Confirmation# 16698077 Wynn Las Vegas
Date: Wednesday, September 24, 2014

To: kentmaerki@gmail.com

Dear Mr. Maerki, We confirm your room reservation has been cancelled per your request. Your deposit will be refunded based on the terms of your reservation cancellation policy. Thank you for choosing Wynn Las Vegas.

Wynn Las Vegas is a luxury resort and casino located on the Strip in Las Vegas, Nevada. For more information, please visit our website at www.wynnlasvegas.com or call 1-800-755-8888.

Sincerely,
Wynn Las Vegas
Resident and General Manager

Wynn Las Vegas Details

Wynn Las Vegas

Subject: Fwd: CANCELLED flight reservation (FMKIV7) | 30SEP14 | PHX-LAS | Maerki/Kent, Coffin/Norma
From: Kent Maerki (kentmaerki@gmail.com)
To: marie@mirschlaw.com;
Date: Thursday, September 25, 2014 6:48 AM

fyi

Kent Maerki
 KentMaerki@gmail.com

----- Forwarded message -----

From: Southwest Airlines <SouthwestAirlines@luv.southwest.com>
Date: Wed, Sep 24, 2014 at 12:54 PM
Subject: CANCELLED flight reservation (FMKIV7) | 30SEP14 | PHX-LAS | Maerki/Kent, Coffin/Norma
To: KENTMAERKI@gmail.com

Your reservation has been cancelled.

Southwest[My Account](#) | [View My Itinerary Online](#)[Check In Online](#)[Check Flight Status](#)[Change Flight](#)[Special Offers](#)[Hotel Offers](#)[Car Offers](#)**Your reservation has been cancelled.**[Air Itinerary](#)**AIR Confirmation: FMKIV7**

Confirmation Date: 09/24/2014

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 on travel each week.

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Passenger(s)	Rapid Rewards #	Ticket #	Expiration	Est. Points Earned
MAERKI/KENT	17651093	5262441140275	Aug 25, 2015	760
COFFIN/NORMA	28448431	5262441140276	Aug 25, 2015	760

Date	Flight	Departure/Arrival
Tue Sep 30	473	Depart PHOENIX, AZ (PHX) at 2:50 PM Arrive in LAS VEGAS, NV (LAS) at 3:55 PM Travel Time 1 hrs 5 mins Wanna Get Away
Fri Oct 3	2495	Depart LAS VEGAS, NV (LAS) at 3:50 PM Arrive in PHOENIX, AZ (PHX) at 5:00 PM



St. Joseph's Hospital
and Medical Center
A Dignity Health Institution

September 25, 2014

Dear Kent Maerki,

This letter will confirm your appointment with Dr. Julie Alberty, Clinical Neuropsychology, on Wed. Oct. 1st at 8am. This appointment has been made at the request of Dr. Kaufman.

To better assess and treat a patient with a known or possible neurological illness, physicians may request a neuropsychological examination. The examination consists of an interview and administration of a series of standardized methods of assessing a person's memory capacity, intellectual abilities, and other brain-related functions.

Very little physical activity is required. No medications or invasive procedures are used. The time to examine an individual may vary, but please arrange for a minimum of four hours, and be prepared to stay up to six hours if needed.

It is requested that a family member or someone who knows you well also accompany you to your appointment for the first 30 minutes. Dr. Alberty would like to interview both of you conjointly if possible.

You will be seen as an outpatient of St. Joseph's Hospital and Medical Center and are asked to make any copayment at the time of that visit. **Please plan to arrive at Dr. Alberty's office at least 15 minutes prior to your scheduled appointment time in order to complete the necessary registration process.** Please bring documentation of your insurance information when you come for your appointment.

It is our understanding that your visit is to be billed to Medicare/aarp. Reimbursement is determined by the insurance carrier at the time the claim is received by them, and is generally based on medical necessity and your specific plan's coverage for these services. Any prior authorization that is necessary is the responsibility of your referring doctor to obtain.

We will attempt to reach you the day prior to your scheduled appointment. We request that you confirm that you intend to keep your appointment. If such confirmation is not obtained, your appointment may be given to an individual on our waiting list. This is necessary in order to ensure that physicians will receive information regarding you in a timely fashion, and that we can see patients as soon as possible for their examination.

We look forward to seeing you on Wed. Oct. 1st at 8am. If you will be unable to keep this appointment, please call us at 602-406-3671. Failure to keep your appointment without notice of cancellation may result in a bill to the patient for a portion of the appointment time.

Dr. Alberty's office is located at 222 West Thomas Road, Suite 315 A. The main parking garage entrance is on 3rd Avenue north of Thomas Road. Secured parking is available on the third level of the Third Avenue Parking Garage, and an open, covered walkway to the 222 Building is conveniently located on that level. Please refer to the Security Gate instructions enclosed with this letter.

Sincerely,

Department of Clinical Neuropsychology

Dr. Julie Alberty, Ph.D.
222 West Thomas Road, Suite 315
Phoenix, AZ 85013
602-406-3671

D



PATIENT INFORMATION

WHY HAVE YOU BEEN REFERRED FOR A NEUROPSYCHOLOGICAL EVALUATION?

Your doctor or healthcare provider has referred you for a neuropsychological evaluation. This evaluation may be of help in:

- 1) finding possible problems with your brain functioning,
- 2) forming a diagnosis,
- 3) defining your thinking skill strengths and weaknesses,
- 4) guiding treatment for your personal, educational or vocational needs,
- 5) making relevant recommendations to your health care provider(s), and/or
- 6) documenting possible changes in your functioning over time.

WHAT IS A NEUROPSYCHOLOGICAL EVALUATION?

A neuropsychological evaluation involves testing that is sensitive to problems in brain functioning. Unlike CT or MRI scans, which show what the structure of the brain looks like, neuropsychological testing examines how well the brain is working when it performs certain functions (for example, remembering). The types of tests that you will take depend upon the questions you and your doctor have. The tests may assess the following areas: *attention and memory, reasoning and problem-solving, visual-spatial functions, language functions, sensory-perceptual functions, motor functions, academic skills, and emotional functioning.* The tests are not invasive; that is, they do not involve attaching you to machines or using X-rays. Most of the tests will involve questions-and-answers, or working with materials on a table. Some tests may use a computer. The testing may be performed by the neuropsychologist or by a trained staff member. The neuropsychologist or a staff member will also spend some time talking with you about your medical, personal, and school history. The total time involved in your evaluation will depend upon the questions you and your doctor have.

WHAT IS A NEUROPSYCHOLOGIST?

A neuropsychologist is a licensed psychologist specializing in the area of brain-behavior relationships. Although a neuropsychologist has a doctoral degree in psychology, he or she does not just focus on emotional or psychological problems. The neuropsychologist has additional training in the specialty field of clinical neuropsychology. That means a neuropsychologist is educated in brain anatomy, brain function, and brain injury or disease. The neuropsychologist also has specialized training in administering and interpreting the specific kinds of tests included in your neuropsychological evaluation. As a part of the required education, a neuropsychologist also has years of practical experience working with people who have had problems involving the brain. An official, more detailed definition of a clinical neuropsychologist has been approved by the National Academy of Neuropsychology and can be viewed at the NAN website (www.NANonline.org).

WHAT WILL HAPPEN AFTER THE EVALUATION?

There are at least two ways you might expect to hear about the results of this evaluation. The neuropsychologist may schedule an appointment to go over the results with you and/or may send you a written report. With your permission, the neuropsychologist may send the results to the doctor or healthcare provider who referred you. This doctor may talk to you about the results of testing on your next office visit. If requested, the neuropsychologist will give you specific recommendations to guide your treatment or otherwise help you in your daily life.

If you have any questions, ask the neuropsychologist or his/her staff. We want to be sure that you understand the evaluation procedure and have all your questions answered.

The National Academy of Neuropsychology is a not-for-profit organization whose purpose is to preserve and enhance knowledge of the assessment and remediation of neurological impairments by psychological means, and foster the development of neuropsychology as a discipline, science and profession. Membership in the National Academy of Neuropsychology is not intended to imply endorsement by the Academy or evidence of competency in neuropsychology.